

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:11cv44**

**PENNSYLVANIA NATIONAL** )  
**MUTUAL CASUALTY INSURANCE** )  
**COMPANY,** )  
 )  
**Plaintiff,** )  
 )  
**v.** )  
 )  
**CARRIAGE PARK ASSOCIATES,** )  
**LLC, et al.,** )  
 )  
**Defendant.** )  
\_\_\_\_\_ )

**ORDER**

Pending before the Court is Plaintiff's Memorandum of Law in Response to Motion to Dismiss [# 10], which it submitted as a Motion to Dismiss Opposition/Response. Defendants filed their Answer on May 2, 2011. Contained within the Answer was a motion to dismiss. Subsequently, Plaintiff filed a response to this motion. The Local Rules, however, provide that "[m]otions to dismiss contained in answers to complaints . . . are considered by the Court to be preserved. A party wishing to have decided any preserved motion **shall file a separate motion and supporting brief.**" LCvR 7.1(C)(1) (emphasis added). Defendants have not filed a separate motion. As the Local Rules make clear, the motion to dismiss contained within their Answer is not properly before the Court for consideration. Id. Thus, the filing of a response brief was not required by Plaintiff.

The Court **STRIKES** Defendants' Memorandum in Support of Motion to Dismiss [# 9] and Plaintiff's Motion to Dismiss Opposition/Response [# 10]. The Court **DIRECTS** both parties to refer to the Court's Local Rules and the Federal Rules of Civil Procedure prior to filing pleadings in the future. If Defendants want to move to dismiss the Complaint, they must file a separate motion and brief in compliance with Local Rule 7.1.

Signed: May 22, 2011

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Dennis L. Howell  
United States Magistrate Judge

